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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

WILLIAM H. KILLOREN, Trustee in Bankruptcy of Hamilton-Brown Shoe Company, a Corporation, Bankrupt, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent.

No. 739

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Eighth Circuit

and

BRIEF IN SUPPORT THEREOF.

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vs.

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No. .....,

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Eighth Circuit.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of William H. Killoren, Trustee in Bankruptcy of Hamilton-Brown Shoe Company, a corporation, Bankrupt, respectfully shows to this Honorable Court:

SUMMARY STATEMENT OF THE MATTER INVOLVED.

On June 18, 1937, the National Labor Relations Board issued a complaint against the Hamilton-Brown Shoe Company alleging that the Shoe Company was engaged in unfair labor practices (R. p. 19). The trial examiner con-

ducted a hearing and made his report, and in due course a hearing was had before the National Labor Relations Board. On November 23, 1938, the Board rendered a decision finding the Shoe Company guilty and ordering a number of employees, named in the Board's order, reinstated with back pay (R. 19). On a petition for review, the United States Circuit Court of Appeals for the Eighth Circuit affirmed the Board's order and directed its enforcement [104 F. (2d) 49]. This decision was filed May 29, 1939 (R. 34).

In the meantime, however, on April 17, 1939, the Hamilton-Brown Shoe Company filed its petition for corporate reorganization under the provisions of Chapter X of the Bankruptcy Act (R. 107). The attempt to reorganize was unsuccessful, and on June 22, 1939, the Shoe Company was adjudicated a bankrupt by the United States District Court in St. Louis (R. 107).

On October 6, 1939, the National Labor Relations Board filed with the referee in its own name proof of claim alleging that the bankrupt was indebted to it "in upwards of the sum of $161,160.17" as the amount due 168 employees covered by the Board's order of reinstatement with back pay; the claim set out the name of each employee and the amount to which he was entitled (R. 4). The Board in its claim asserted that the back pay allowance constituted a provable debt or claim in bankruptcy, that the Board had the right to assert such claim, and that the claim should be given the priority due to United States under Section 64a (5) of the Bankruptcy Act, 11 U. S. C. A., Section 104a (5).

William H. Killoren, petitioner herein, as trustee in the bankruptcy proceedings, in due course filed a motion to expunge the Board's claim and subsequently an amended motion to expunge (R. 55). After a hearing, the referee

entered an order sustaining the trustee's motion and ordering the claim expunged (R. 117, 119).

A petition for review of this order was duly filed (R. 120). On August 3, 1940, the petition for review was denied by the District Court (R. 130).

The Circuit Court of Appeals for the Eighth Circuit, on an appeal taken to that Court, reversed the order of the District Court (R. 161), directed that the claim be allowed, and that the claims of the individual employees be given priority under Section 64a (2) of the Bankruptcy Act, 11 U. S. C. A., Section 104a (2). The opinion held that the unpaid awards were constructively wages earned. The contention of the Board that the claim be given the priority due the United States under Section 64a (5) of the Bankruptcy Act, 11 U. S. C. A., Section 104a (5), was denied.

In due course both petitioner and the Board filed their respective motions for rehearing, which were denied by the Court on October 11, 1941 (R. 203).

BASIS OF THE JURISDICTION OF THIS COURT.

Jurisdiction is claimed under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938 (see Title 28, U. S. C. A., Section 347).

An interpretation is sought of the Bankruptcy Act (Act of July 1, 1898, c. 541, 30 Stat. 544), as amended, and in particular of the Amendatory Act of 1938, known as the Chandler Act (Act of June 22, 1938, c. 575, 52 Stat. 840); and of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449). Section 63a (4) of the Bankruptcy Act [Title 11, U. S. C. A. 103a (4)] provides that debts of a bankrupt may be proved and allowed if founded upon an open account or a contract, expressed or implied. Section 64a (2) of the Bankruptcy Act [Title 11, U. S. C.

A. 104a (2)] provides for priority to wages earned within three months before bankruptcy by workmen, not to exceed $600.00 to each claimant. Section 64a (5) of the Bankruptcy Act [11 U. S. C. A., Section 104a (5)] provides for priority to any person, including the United States, who by the laws of the United States is entitled to priority.

Section 10 (c) of the National Labor Relations Act [Title 29, U. S. C. A., Section 160 (c)] provides, inter alia, that if the Board is of the opinion that any person named in a complaint has engaged in or is engaging in any unfair labor practices, then the Board is authorized to issue a cease and desist order and "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act."

The judgment of the Circuit Court of Appeals, Eighth Circuit, was entered September 6, 1941 (R. p. 172); the petitions for rehearing were denied October 11, 1941 (R. p. 203); thirty days stay of mandate was granted October 23, 1941 (R. p. 203).

THE QUESTION PRESENTED.

The questions presented are whether an order of the National Labor Relations Board of reinstatement with back pay is properly the basis of a claim allowable and provable under the Bankruptcy Act; and whether the National Labor Relations Board may properly file a claim based upon such an order; and whether such a claim, if allowable and provable, is entitled to any priority; and, if entitled to priority, whether it is to be accorded the priority given under Section 64a (2) of the Bankruptcy Act or the priority given under Section 64a (5) of that Act.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. The Circuit Court of Appeals has decided an important question of federal law which has not been, and should be, settled by this Court.

2. The Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this Court.

Whether or not an order of the National Labor Relations Board providing for reinstatement of employees with back pay is a provable claim is a question of considerable importance. The Board itself recognized that at the outset of these proceedings (R. 105). If the claim is provable in bankruptcy, it is dischargeable in bankruptcy, as we shall undertake to develop in further detail in the accompanying brief. If it should be held that the claim is provable and allowable under the Bankruptcy Act, it is important to determine what priority, if any, should be accorded the claim. The National Labor Relations Board contended the claim should be given the priority of the United States under Section 64a (5) of the Act, but petitioner contended that the claim was not entitled to any priority under the Act; while the decision of the Court of Appeals was to the effect that the claim was entitled to priority under Section 64a (2) of the Act.

PRAYER.

For the foregoing reasons your petitioner prays that a writ of certiorari issue out of this Court to the Circuit Court of Appeals for the Eighth Circuit, commanding said Court to certify and send to this Court, on a day to be determined, a full and complete transcript of the record

of all the proceedings of such Court had in this cause, to the end that this cause may be reviewed and determined by this Court; that the final order and decree of the Circuit Court of Appeals for the Eighth Circuit be reversed, and that the petitioner be granted such other and further relief as is proper.

WILLIAM H. KILLOREN,
Trustee in Bankruptcy of Hamilton-Brown Shoe Company, a Corporation, Bankrupt,
Petitioner,

By LON O. HOCKER,
HARRY S. GLEICK,
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